

From: Michael Westbay
To: Microsoft ATR
Date: 11/16/01 11:24pm
Subject: Against Settlement

To whom it may concern,

I am very much against the currently proposed settlement between the DOJ and Microsoft. There is nothing in the settlement that Microsoft can't get around when it comes to not disclosing information to the only competition that MS hasn't been able to beat down, the Open Source community.

I used to develop software for the Microsoft platform. When installing service packs and other Microsoft products like MS Office started causing serious problems with other software packages from third party vendors (Borland and Netscape in particular) that I used, I began becoming less and less enthusiastic about using Microsoft. And I was one of the biggest promoters of the MS platform in our company before that.

I got so fed up with Microsoft in 1998 that I reformatted my notebook computer and installed FreeBSD (a free UNIX-like operating system) and haven't used MS on that machine ever since. When I bought a new computer two years ago, the preinstalled version of MS Windows didn't last five minutes before being reformatted over. Between 1998 and 2000, I slowly got my work assignments changed over to where I could work in a platform independent environment (thanks to Java), and on January 5, 2000, I reformatted the last Microsoft partition that I was using.

However, because I do work as a software developer, it is important that I interoperate with Microsoft users. The settlement, as it stands, looks to allow Microsoft to completely exclude Open Source projects like SAMBA from interacting with Microsoft operating systems based on bogus "security" concerns or simply by disagreeing with the Open Source "business" model. Take a look at this section:

J. No provision of this Final Judgment shall:

1. Require Microsoft to document, disclose or license to third parties:
 - (a) portions of APIs or Documentation or portions or layers of Communications Protocols the disclosure of which would compromise the security of anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems, including without limitation, keys, authorization tokens or enforcement criteria; or
 - (b) any API, interface or other information related to any Microsoft product if lawfully directed not to do so by a governmental agency of competent jurisdiction.
2. Prevent Microsoft from conditioning any license of any API,

Documentation or Communications Protocol related to anti-piracy systems, anti-virus technologies, license enforcement mechanisms, authentication/authorization security, or third party intellectual property protection mechanisms of any Microsoft product to any person or entity on the requirement that the licensee:

- (a) has no history of software counterfeiting or piracy or willful violation of intellectual property rights,
- (b) has a reasonable business need for the API, Documentation or Communications Protocol for a planned or shipping product,
- (c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business,
- (d) agrees to submit, at its own expense, any computer program using such APIs, Documentation or Communication Protocols to third-party verification, approved by Microsoft, to test for and ensure verification and compliance with Microsoft specifications for use of the API or interface, which specifications shall be related to proper operation and integrity of the systems and mechanisms identified in this paragraph.

I mentioned that SAMBA is important for other operating systems to communicate with Microsoft based systems. SAMBA is an open source project that primarily allows MS and non-MS operating systems to share files and printers on a network. Given J-1-a above, it would not be hard to imagine Microsoft claim and/or modify their communications protocols to contain some sort of "security" information, thus making those communication protocols except from disclosure. If Microsoft didn't have a record of underhanded tricks to exclude competition, then I could believe that this little loophole wouldn't make much of a difference, however, I've witnessed them break Netscape's TCP/IP (a communication protocol) with a version of MS Office which shouldn't have had anything to do with network communication (at that time), so I wouldn't put this past them.

Furthermore, J-2-b and c "protect" Microsoft from revealing any API documentation to anybody based on their "business need" and the "viability of its business." Open Source software is FREE! It has less to do with "business" and more to do with providing a solution to a problem.

The Open Source community is essentially a group of volunteers who help one another get a job done. Even though its members tend to be distance geographically, it's more of a "community" than many small towns are these days. And Microsoft has stated time and again that this is their next target for enialiation, as they've killed off so many other branches of the software market in the past.

The above two and several other provisions (such as not guaranteeing non-reprisals from Microsoft against OEMs that do NOT ship computers with a MS operating system) of the current agreement do nothing to protect Open Source, which is more and more becoming the only hope to compete against Microsoft's monopoly.

The proposal, as it stands, is unacceptable.

Thank you for your time and consideration in this matter.

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Michael Westbay

Work: Beacon-IT <http://www.beacon-it.co.jp/>

Home: <http://www.seaple.icc.ne.jp/?westbay>

Commentary: <http://www.japanesebaseball.com/forum/>